

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 380

Introduced by Senator Padilla

February 20, 2013

An act to add Section 7908 to the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Padilla. Communications: service interruptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require the order to clearly describe the specific service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected and be narrowly tailored to the specific circumstances under which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of service only for as long as is reasonably necessary, require that the interruption

cease once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communications service provider to cease the interruption. The bill would provide that a good faith reliance upon an order of a judicial officer or a signed statement of intent to apply for a court order, as prescribed, constitutes a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

This bill would authorize a governmental entity to interrupt communications service without a court order if it reasonably determines that an extreme emergency situation exists that involves immediate danger of death and there is insufficient time, with due diligence, to first obtain a court order, and it complies with other specified requirements.

The bill would also find and declare that ensuring that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in constitutionally protected expression, is a matter of statewide concern, and not a municipal affair, as provided.

~~This bill would state the intent of the Legislature to enact legislation to prohibit a governmental entity, or a provider of communications service acting at the request of a governmental entity, from interrupting communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, unless the interruption is authorized by an order signed by a judicial officer, with an exception for an interruption in extreme emergency circumstances.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature hereby finds and declares all of*
- 2 *the following:*
- 3 *(a) Preserving the availability and openness of communications*
- 4 *networks is a bedrock principle of federal and state law and*
- 5 *essential to commerce, public safety, and democracy.*

1 ***(b) With email, data transfers, videoconferencing, ecommerce,***
2 ***and myriad online services now a core element of every type of***
3 ***economic activity, interruption of communications service deprives***
4 ***individuals and enterprises of the ability to participate in the***
5 ***modern economy, with significant financial impact even if an***
6 ***interruption is of short duration.***

7 ***(c) Interruption of communications service threatens public***
8 ***safety by depriving persons of the ability to call 911 and***
9 ***communicate with family, friends, employers, schools, and others***
10 ***in an emergency; deprives persons of the ability to receive wireless***
11 ***emergency alerts; and impairs the ability of first responders to***
12 ***communicate with each other.***

13 ***(d) The right of citizens to freedom of speech under the First***
14 ***Amendment to the United States Constitution and Section 2 of***
15 ***Article I of the California Constitution extends to speech through***
16 ***any technology, from the pamphlets and newspapers of the***
17 ***Founding Fathers to the emails, blogs, tweets, and texts of modern***
18 ***day citizens using wireless devices.***

19 ***(e) The power of new wireless devices and technologies for***
20 ***participation in democracy underscores the need to protect First***
21 ***Amendment rights and ensure that California and the United States***
22 ***do not take the path of oppressive governments around the world***
23 ***that routinely shut down the Internet and wireless networks to***
24 ***silence public protest.***

25 ***(f) Interruption of communications service by a government***
26 ***entity that prevents citizens from communicating can be a “prior***
27 ***restraint” on speech, which the United States Supreme Court has***
28 ***held bears a heavy presumption of unconstitutionality and is***
29 ***justified only in exceptional circumstances.***

30 ***(g) The California Supreme Court has held that a customer’s***
31 ***telephone service may be interrupted only as directed by a court***
32 ***order with a finding of probable cause that service is being used***
33 ***for an illegal purpose and that, absent immediate interruption of***
34 ***service, significant dangers to public health or safety will result.***

35 ***(h) In August 2011, the Bay Area Rapid Transportation District***
36 ***(BART) shut down wireless service for three hours in order to***
37 ***quash a public protest relating to a fatal shooting by BART police***
38 ***on a train platform.***

39 ***(i) In December 2011, BART adopted a policy authorizing***
40 ***wireless service shutdowns with no court review and no probable***

1 *cause requirement, which prompted a public inquiry by the Federal*
2 *Communications Commission.*

3 *(j) With more than 85 percent of American adults owning a*
4 *wireless device, and use of wireless services and platforms*
5 *expanding every day, protecting these services from interruption*
6 *is more important than ever in order to protect commerce, public*
7 *safety and First Amendment freedoms that are the core of*
8 *democracy.*

9 *SEC. 2. Section 7908 is added to the Public Utilities Code, to*
10 *read:*

11 *7908. (a) For purposes of this section, the following terms*
12 *have the following meanings:*

13 *(1) “Communications service” means any communications*
14 *service that interconnects with the public switched telephone*
15 *network and is required by the Federal Communications*
16 *Commission to provide customers with 911 access to emergency*
17 *services.*

18 *(2) “Governmental entity” means every local government,*
19 *including a city, county, city and county, a transit, joint powers,*
20 *special, or other district, the state, and every agency, department,*
21 *commission, board, bureau, or other political subdivision of the*
22 *state, or any authorized agent thereof.*

23 *(3) “Interrupt communications service” means to knowingly or*
24 *intentionally suspend, disconnect, interrupt, or disrupt*
25 *communications service to one or more particular customers or*
26 *all customers in a geographical area. “Interrupt communications*
27 *service” does not include any interruption of service pursuant to*
28 *a customer service agreement, a contract, a tariff, a provider’s*
29 *internal practices to protect the security of its networks, Section*
30 *2876, 5322, or 5371.6, Section 149 or 7099.10 of the Business and*
31 *Professions Code, or subdivision (d) of Section 4576 of the Penal*
32 *Code.*

33 *(4) “Judicial officer” means a magistrate, judge, justice,*
34 *commissioner, referee, or any person appointed by a court to serve*
35 *in one of these capacities of any state or federal court located in*
36 *this state.*

37 *(b) (1) Unless authorized pursuant to subdivision (c), no*
38 *governmental entity and no provider of communications service,*
39 *acting at the request of a governmental entity, shall interrupt*
40 *communications service for the purpose of protecting public safety*

1 *or preventing the use of communications service for an illegal*
2 *purpose, except pursuant to an order signed by a judicial officer*
3 *obtained prior to the interruption. The order shall include all of*
4 *the following findings:*

5 *(A) That probable cause exists that the service is being or will*
6 *be used for an unlawful purpose or to assist in a violation of the*
7 *law.*

8 *(B) That absent immediate and summary action to interrupt*
9 *communications service, serious, direct, immediate, and*
10 *irreparable danger to public safety will result.*

11 *(C) That the interruption of communications service is narrowly*
12 *tailored to prevent unlawful infringement of speech that is*
13 *protected by the First Amendment to the United States Constitution*
14 *or Section 2 of Article I of the California Constitution, or a*
15 *violation of any other rights under federal or state law.*

16 *(2) The order shall clearly describe the specific communications*
17 *service to be interrupted with sufficient detail as to customer, cell*
18 *sector, central office, or geographical area affected, shall be*
19 *narrowly tailored to the specific circumstances under which the*
20 *order is made, and shall not interfere with more communication*
21 *than is necessary to achieve the purposes of the order.*

22 *(3) The order shall authorize an interruption of service only for*
23 *as long as is reasonably necessary and shall require that the*
24 *interruption cease once the danger that justified the interruption*
25 *is abated and shall specify a process to immediately serve notice*
26 *on the communications service provider to cease the interruption.*

27 *(c) (1) Communications service shall not be interrupted without*
28 *a court order except pursuant to this subdivision.*

29 *(2) If a governmental entity reasonably determines that an*
30 *extreme emergency situation exists that involves immediate danger*
31 *of death and there is insufficient time, with due diligence, to first*
32 *obtain a court order, then the governmental entity may interrupt*
33 *communications service without first obtaining a court order as*
34 *required by this section, provided that the interruption meets the*
35 *grounds for issuance of a court order pursuant to subdivision (b)*
36 *and that the entity does all of the following:*

37 *(A) Apply for a court order without delay, and in no event, later*
38 *than two hours after commencement of an interruption of*
39 *communications service.*

1 (B) Provide to the provider of communications service involved
2 in the service interruption a statement of intent to apply for a court
3 order signed by an authorized official of the governmental entity.
4 The statement of intent shall clearly describe the extreme
5 emergency circumstances, and the specific communications service
6 to be interrupted with sufficient detail as to the customer, cell
7 sector, central office, or geographical area affected.

8 (C) Provide conspicuous notice of the application for a court
9 order authorizing the communications service interruption on its
10 Internet Web site without delay, unless the circumstances that
11 justify an interruption of communications services without first
12 obtaining a court order justify not providing the notice.

13 (d) An order to interrupt communications service, or a signed
14 statement of intent provided pursuant to subdivision (c), that falls
15 within the federal Emergency Wireless Protocol shall be served
16 on the California Emergency Management Agency. All other orders
17 to interrupt communications service or statements of intent shall
18 be served on the communications service provider's contact for
19 receiving requests from law enforcement, including receipt of and
20 responding to state or federal warrants, orders, or subpoenas.

21 (e) A provider of communications service that intentionally
22 interrupts communications service pursuant to this section shall
23 comply with any rule or notification requirement of the commission
24 or Federal Communications Commission, or both, and any other
25 applicable provision or requirement of state or federal law.

26 (f) Good faith reliance by a communications service provider
27 upon an order of a judicial officer authorizing the interruption of
28 communications service pursuant to subdivision (b), or upon a
29 signed statement of intent to apply for a court order that the
30 government asserts meets the requirements of subdivision (c), shall
31 constitute a complete defense for any communications service
32 provider against any action brought as a result of the interruption
33 of communications service as directed by that order or statement.

34 (g) The Legislature finds and declares that ensuring that
35 California users of any communications service not have that
36 service interrupted, and thereby be deprived of 911 access to
37 emergency services or a means to engage in constitutionally
38 protected expression, is a matter of statewide concern and not a
39 municipal affair, as that term is used in Section 5 of Article XI of
40 the California Constitution.

1 SECTION 1. It is the intent of the Legislature to enact legislation
2 to prohibit a governmental entity, or a provider of communications
3 service acting at the request of a governmental entity, from
4 interrupting communications service for the purpose of protecting
5 public safety or preventing the use of communications service for
6 an illegal purpose, unless the interruption is authorized by an order
7 signed by a judicial officer, with an exception for an interruption
8 in extreme emergency circumstances.

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